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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN L. EDMONDS, individually and as a Managing
General Partner of FIFTH AND
106TH STREET HOUSING COMPANY, INC.,
LOGAN PLAZA ASSOCIATES, LP CHARLES H.
ASSOCIATES a/k/a CHARLES H. HILL
ASSOCIATES, LP AND AS A LIMITED PARTNER
OF CHURCH HOME ASSOCIATES, LP,

Plaintiff,

- against -

ROBERT W. SEAVEY, individually and as a General
Partner of FIFTH AND 106TH STREET ASSOCIATES,
LP, LOGAN PLAZA ASSOCIATES, LP, CHARLES
HILL ASSOCIATES, CHARLES HILL ASSOCIATES,
LP and as a Limited Partner of CHURCH HOME
ASSOCIATES, LP; PHYLLIS M. SEAVEY, individually
and as owner, manager and member of DALTON
MANAGEMENT COMPANY LLC; AVERY B.
SEAVEY, individually and as a General Partner of
LOGAN PLAZA ASSOCIATES, LP, CHURCH
HOME ASSOCIATES and owner of DALTON
MANAGEMENT COMPANY, LLC; and RONALD
DAWLEY, as Chief Executive Officer of DALTON
MANAGEMENT COMPANY, LLC;
DALTON MANAGEMENT COMPANY, LLC, and
THE SEAVEY ORGANIZATION; and MARKS,
PANETH & SHRON, Auditors,

Defendants.

08 – CV – 5646 (HB)

**DECLARATION OF
WILLIAM J. KELLY, ESQ.,
IN RESPONSE TO THE
DECLARATION OF M.
DOUGLAS HEYWOODE**

William J. Kelly, an attorney admitted to practice before this Court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am associated with the law firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for defendant Marks, Paneth & Shron, LLP, sued here as “Marks, Paneth & Shron, Auditors” (“Marks Paneth”). I submit this declaration in response to the Declaration of M. Douglas Heywoode, Esq., dated April 27, 2009, offered in purported opposition to co-defendants’ motion for sanctions and in further support of plaintiff’s cross-motion for sanctions.

2. Although we do not wish to get caught up in the other parties’ motions for sanctions, Counselor Heywoode makes several erroneous statements concerning Marks Paneth’s role with the partnerships and makes unsupported characterizations of the testimony and evidence in this case such that Marks Paneth cannot sit idly by. For example, Counselor Heywoode’s repeated assertions concerning Marks Paneth’s role as auditor and the firm’s independence is not supported by any fair reading of any evidence in this case. However, rather than engage in a tit for tat exchange, Marks Paneth will present the transcripts and documentary evidence to the Court on an appropriate future motion regarding the merits of the case.

3. However, it should be noted that none of Counselor Heywoode’s statements about Marks Paneth relate in any way to any of the purported claims set forth against Marks Paneth in the complaint.

4. If the Court so desires, we are prepared to submit a detailed rebuttal to each of

Counselor Heywoode's spurious comments. However, in the context of this motion and cross motion, it would not appear to be necessary.

Dated: White Plains, New York
April 30, 2009



William J. Kelly (WK 5966)